## 140A- Self Assessment

- Tax is payable on basis of ROI submitted

| | |
|---|---|
| Income Tax | XXX |
| + Interest U/s234 A/B/C | xxx |
| + Fee U/s 234F | xxx |
| - Relief U/s 90/90A/91 | xxx |
| - MAT/AMT credit | xxx |
| - TDS/TCS credit | xxx |
| - Advance tax | xxx |
| = amount to be paid by way of Self assessment tax | xxx |

- If payment is short, then it is first applied towards **Fees**, then **interest** and balance towards **Tax**
- IF assesse failed to pay whole or part of tax or interest or Fee- demmed to **assesse in default**.
  Shall pay interest U/s 220 @ 1%PM or part and AO can levy penalty U/s 221 upto the amount not paid U/s 140A

## 142 (1)(i)- Enquiry before assessment

- AO may **serve notice** to file ROI if not filed on time.
- Notice can also be issued after RAY

## 142 (1)(ii)- notice for info

- AO may serve notice for
  - Production of A/c, documents & other info.
  - **statement of Assets & Liabilities** whtether not included in A/c (**Prior approval** by AO from **JCIT**)
  - A.O. **shall not** require production of A/c & documents for a period more than 3 years prior to RPY
  - Whether ROI filed or not

## 142 (2)- Enquiry from others

Inquiry from any person in connection with assessment of Income of assessee can be made for getting Full Information

## 142 (2A)-2D Special Audit

- Case is pending with AO
- **AO is of opinion** that it is necessary to get the A/c audited having regards to
  - Nature & Complexity in A/c or
  - Volume of A/c or
  - Doubts about the correctness of A/c or
  - Multiplicity of transactions in A/c or
  - Special nature of business activity &
  - It is in the interest of the revenue
- **SCN** is issued to show cause why direction U/s 142(2A) shall not be issued
- **Direction** U/s 142 (2A) is issued to get it's a/c's audited (**prior approval of CCIT/CIT**)
- **Appeal**= Appeal cannot be made
- **Time limit** to submit audit report- Specified in order, however, not to extend 180 days
- **Writ petition**-1) even if assesse proves that no complexity in A/c & Interest of revenue is not effected & AO issues direction for special audit. 2) Where **no SCN is issued.**
- **OBH**–where material gathered under Special audit is to be utilised for the purpose of Assessment. **No OBH** if non compliance

## 142A- Estimate by Valuation Officer

- **A.O. may refer V.O**. after giving OBH, where an estimate is required to be made of **value/ FMV of any Asset, property or investment.**
- **Time Limit** for report- Within 6 months FTEOM reference was made
- **Reference to VO**- whether/not he is satisfied with the correctness of Books of accounts

## 143(1) Summary Assessment

- Return processed by making prima facie adjustments for
  - **Arithmetical error**
  - **Incorrect claim** apparent from record
  - **Disallowance of loss**- to s/off loss in CY if ROI of PY furnished after Due date
  - **Disallowance of loss**- taken in Audit report but not in ROI
  - **Disallowance of Deduction**- if ROI furnished after due date
- Intimation in following cases
  - Tax/Interest/Fee is found payable
  - Tax/interest found refundable
  - Increase/ reduction of loss
  - Other cases- acknowledgement of ROI is deemed intimation
- **No adjustment**- unless intimation is given to assesse
- **Adjustment** if No response is received within **30 days** of intimation (if response received- consider such)
- **Time Limit** for such intimation- no intimation after the expiry of 1-year FTEOFY in which ROI is filed
- **Appeal** against intimation- **to CIT(A)**
- **Revision- No** revision U/s 263/264
- **Rectification- U/s 154 possible**

## 143 (1D)- processing of return in case of scrutiny

- **Applicable**- from the FY-16-17 (AY 17-18)
- ROI filed contains **refund claim** & case is **selected for scrutiny**- refund shall be granted to Assesses U/s 143 (1)
- **Exception**- however if AO if of opinion that interest of revenue is likely to be adversely affected- then After previous **approval of CIT** AO can **withhold the refund**

## 143 (2)- notice for Scrutiny/Regular Assessment

- where aa has furnished return and AO thinks it necessary or expedient to ensure that aa has
  - not understated the income
  - not computed excessive loss
  - not under paid the tax in any manner

  shall furnish **notice to assessee** to attend his office on a specified date requiring him to produce any evidence on which aa may rely in support of his return
- **Time limit: -** For serving notice - 6 months FTEOFY in which **ROI filed**
- **ROI not filed**- notice U/s 143(2) cannot be given

## 143(3) -Order of Scrutiny/Regular Assessment

- After hearing aa and taking into consideration all documents/ materials submitted by aa, AO will make an assessment of total income or loss of aa and determine amount due/ refund payable
- **Time limit: -**order of assessment shall be passed within 12 months FTEO RAY (18 mts for AY 18-19).
  If case is **referred to TPO** then order of assessment shall be passed within 24 months FTEO RAY (30 months for AY 18-19)
- AO can reduce the income below, increase the loss higher than furnished in ROI
- **Disallowing of exemption**
  **1st proviso to 143(3)**
  Where aa has contravened the provision relating to exemption u/s 10(21), 10(22B), 10(23A), 10(23B), 10(23C)
  **2nd provision to 143(3)**
  Where aa is not complying with the conditions of approval U/s 35(1)(ii)/35(1)(iii)
  - AO shall **inform C.G.** of such contravention
  - **C.G.** after giving OBH, is **satisfied** that the contravention has happened, **shall withdrew the exemption**
  - AO will then make assessment without considering this exemption and calculate tax
- **Disallowing of exemption u/s 10(23C) or 11 or 12**
  If the business receipts exceed 20% of total receipts- whether or not approval/notification of exemption is cancelled-**AO by himself disallow exemption**
- **Appeal** against order- to **CIT(A) possible**
- **Rectification** of mistake- **U/s 154 possible**
- **Revision** of order – **U/s 264 possible**
- **Notice U/s 143(2) not issued**- The assessment is void -ab-initio

## 143(3A)/3B/3C- Regular/ scrutiny assessment

**3A**-The CG may make a scheme by notification in the official gazette for the purpose of making assessment of total income or loss of the assesses under section 143 (3) so as to impact greater efficiency transparency and accountability by

- eliminating the interface between the assessing officer and the assessee in the course of proceedings to the extent technologically feasible
- optimising utilisation of the resources through economies of scale in functional specialization
- introducing a term-based assessment with dynamic jurisdiction

**3B**- The central government may for the purpose of giving affect the scheme made under subsection 3A, by notification in the official gazette direct that any of the provision of these Act relating to assessment of total income or loss shall not apply or shall apply with such exceptions, modifications and adaptation as may be specified in the notification.

## 144- Best Judgement Assessment

- If an aa has -
  - failed to file return u/s **139(1)**
  - failed to comply with all the terms of a notice issued u/s. **142(1)(i)/(ii)**
  - Failed to comply with the direction issued **U/s 142 (2A)**
  - failed to comply with all the terms of a notice issued u/s **143 (2)**

  Then the AO after **taking into consideration all the material** he has gathered make the assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee
- **OBH** shall be given **by serving a notice** calling upon the aa to show cause, why the assessment should not be completed to the best of his judgment. **IF no OBH is given**- Appeal to CIT(A) or Revision U/s 264
- **Notice is not required** where a notice u/s 142 (1) has been issued prior to the making of an assessment under this section
- AO cannot assess the income below, loss higher than furnished in ROI
- **Time limit: -**order of assessment shall be passed within 12 months FTEO RAY (18 months for AY 18-19).
- The AO shall make BJA on a scientific & Rational Basis & not on adhoc basis.

## 144A- power of JCIT to issue direction

- JCIT may
  - on his own motion or
  - reference made by either AO/aa,
    call for and examine record of any pending assessment/reassessment.
- **if he considers having regards to the**
  nature of case or
  Amount involved or
  Or for any other reason,
  it is necessary or expedient to do so then,
  - He may **issue such guidance** to AO **to enable him to complete assessment**
  - These guidelines are **binding on AO**
  - **OBH**: Where such guidelines are prejudicial to aa - no such guidelines be issued before aa is given an OBH
- **Appeal;** No Appeal can be filled against such directions

## 145- Method of accounting

- Income chargeable u/h "PGBP" or "IFOS" shall, be computed in accordance with **either cash or mercantile system of accounting** regularly employed by the assessee.
- Assesse can adopt cash system for one system and accrual for another business
- Assesse can adopt cash system for source of income under the head "other source" and accrual system for another source under the same head.
- Income from IFOS and Other source shall be computed in **accordance with ICDS**- failure of this can lead to best judgement assessment U/s 144
- **ICDS is applicable from AY- 17-18** to all **except Individual/HUF** who are **not required to** get their accounts **audited U/s 44AB**
- **ICDS is applicable for computation of Income** but not required for maintenance of books of accounts
- **AO may make an assessment to the best of his judgement** U/s 143(3)/144/147/153A, if it is found that
  - AO is **not satisfied** about the **correctness or completeness of the accounts** of the assesses
  - where the **method of accounting** have **not been regularly followed** by the assesses
  - **Income** under the head PGBP or IFOS has not been computed **in accordance with ICDS**

  In the above cases, the AO gets the **power to Reject the books** of account and make an assessment to the best of his judgement

## 148- Notice for Income Escaped Assessment (IEA)

- AO shall **serve notice** on aa **requiring him to file a ROI** for the PY mentioned in notice & within prescribed time in the notice.
- AO shall before issuing such notice **record his reasons** for doing so
- **Separate notice** for each AY whose income is to be assessed/reassessed u/s 147.
- ROI filed u/s 148 cannot be revised
- **After filing of ROI** by aa, **AO** is duty bound to **supply** to aa the **reasons recorded** for issuing notice u/s 148
- if **AO does not supply the reasons** then he **cannot proceed further u/s 147**
- **Invalid reason recorded –** for issue of notice u/s 148, WRIT PETITION to HC
- **Notice not issued-** Assessment/ Reassessment is void
- **Fresh Notice-** Where notice is issued for X income and it was found that Y income has escaped income instead X, then AO has to drop proceedings and issue fresh notice for assessing income y.
- **Fresh assessment-** notice is not required to be issued for making fresh assessment/ reassessment u/s 143(3)/144/147.

- Procedure
  - Notice is **served** on aa to file ROI (Ex. For AY 14-15 notice U/s 148 can be issued up to 31.03.2019- if notice is served on 31.03.19 it is a valid notice)
  - If aa files ROI in response to notice, then
  - AO shall serve notice u/s 143(2) within 6 months FTEO FY ROI was filed u/s 148
  - If notice is not served or served after 6 months FTEO FY ROI filed u/s 148- then the proceedings u/s 147 shall be Invalid
- **Time limit to issue notice u/s 148 [149(1)]** issue within
  - 4 years – FTEO RAY, general cases
  - 6 years – FTEO RAY, if IEA >= Rs 1lakhs
  - 16 years - FTEO RAY, if asset is located O/s India (Including financial interest)
  - **No time limit (section 150)-** to give finding to the directions given U/s 250, 254, 260A, 262, 263, 264 or order of court- notice can be issued **at anytime (time limit given for it separately u/s 153(5),(6))**

## 147-A/REA of IEA

- AO has REASON TO BELIEVE that **income chargeable** to tax **has escaped assessment** for any AY, **then he may** ST the provision of section 148 to 153, **assess or reassess such income and**
  **also any other income** which has **escaped assessment** and which **comes to his notice** subsequently under this section. **during the proceedings**
  (other income can be assessed **without issuing fresh notice** if the other income relates to same AY for which notice U/s 148 has already issued)
- <u>Income is deemed to have escaped assessment</u>
  - Where **no ROI filed** by the aa but his **TI exceeded the BEL**
  - Where a **ROI filed** by the aa **but no assessment has been made** and aa has understated the income or has claimed excessive loss, deduction, allowance or relief in the return
  - Where an **assessment has been made, but** income chargeable to tax has been **under assessed or**
    such income has been assessed at **low rate or**
    such income has been made the subject of **excessive relief** under this Act **or excessive loss** or **depreciation** or any **other allowance** has been computed
  - A person is found to have **any asset** (including financial interest in any entity) **located o/s India.**
  - Aa failed to furnish **TP report** U/s 92E
  - On the Basis of **information received from prescribed IT authority** U/s 132C(2), it if found income exceeds BEL (where ROI not filed) or claimed excess loss or deduction or allowance.
- **Partial merger concept applies-** matters which have gone for appeals or revision cannot be reopened u/s 147
- <u>Important Points</u>
  - **Change in opinion**- does not amount to reason to believe, AO cannot Invoke section 147- Kelvinator of India Ltd (SC)
  - Sun Engineering Private Limited
    **Matters lost** in original assessment cannot be claimed in reassessment proceedings.
    **Expense not claimed** in original assessment cannot be claimed in reassessment proceedings. Except for Income which has escaped assessment can be claimed.
  - Reason to believe
    - Rumours, gossips and suspicion does not amount to reason to believe. Objections raised by CAG auditor cannot be reason to believe. Revenue can invoke section 263 and call & examine the records.
    - Reasons to believe includes
      - A later supreme court judgement
      - Retrospective amendment in Law
      - Mistake apparent from record etc
  - Other issues during proceedings
    Income w.r.t other issues which comes to notice of AO during the course of proceedings, notwithstanding that the reason for such issue has been not been included in the reason recorded u/s 148- AO can assess or reassess such income

- **Time limit 153(3)**- pass order U/s 147 within 12 months FTEO FY in which notice U/s 148 was issued
  [**Note:** 9 months where notice u/s 148 is **SERVED** upto 31.03.2019]
- **Any no of assessment is possible U/s 147**
  Provided the notice U/s 148 is issued within the time limit of section 149(1)
- **Appea**l against order- to **CIT(A) possible**
- **Rectification** of mistake- **U/s 154 possible**
- **Revision** of order – **U/s 264 possible**

- **Date of issue of notice**- Date on which it is handed over (to AO who in turn hands over) to post office for SERVICE on assesses- Kanubhai M. Patel (HUF) (Gujarat)

- **Notice of demand** should also be prepared within the time limit of section 153. If notice of demand is prepared after the time limit of section 153, then the assessment/reassessment shall be time bared and void ab-initio- Purshotamdas T. Patel

## 154- Rectificatio of Mistake

- A **Mistake Apparent from Record** can be rectified under this section
- Income Tax Authority**(ITA) may Amend any**
  - **Order** passed by it
  - **Intimation or deemed Intimation** U/s 143(1)
  - **Intimation** U/s 200A(1) i.e TDS or 206CB(1) I.e TCS
- **When?** ITA may make rectification
  - On its **own motion or**
  - Mistake is **brought to its notice by assesses** or diductor **or**
  - Mistake is brought to its **notice by AO** when authority concerned is CIT(A)
- How? Amendment or rectification shall be done **by Passing an Order**
- **Time Limit for rectification: no amendment** shall be made after the Expiry of 4 year **FTEO FY** in which order sought to be amended was passed
- **Time Limit for passing an order-** when application is made by the assesse
  ITA shall pass an order **within a period of** 6 months **FTEO Month** in which application is received by it.
- **Partial merger concept applies-** matters which have gone for appeals or revision cannot be rectified.
- If there is **Retrospective amendment in law** or **Subsequent interpretation of law by supreme court** or **Later supreme court judgement**
  Then the same can be given effect by passing a rectification order within the period of limitation of 4 years.

- The order sought to be amended does not necessarily mean original order but rectified order also.
  4 years shall be from the end of financial year in which rectified order was passed for the second rectification under section 154.
  -Hind wire Industries Limited (SC)

**FTEOM =** From the end of the month
**FTEOFY =** From the end of Financial year
**RAY=** Relevant assessment year
**RPY=** Relevant Previous year
**SCN=** Show cause Notice
**A/c=** Accounts
**AO=** Assessing officer
**AA/aa-** Assessee
**OBH=** Opportunity of being heard

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